



Breakout Session 2: Land and Labor Rights and Agricultural Investments

Following the sharp rise in international food prices in 2007-2008 there has been a rapid increase in large-scale land acquisitions in developing countries by sovereign wealth funds, private equity funds, agricultural producers, and other key players in the food and beverage industries. The largest concentration of acquisitions has been in countries with weak protection of land, labor and in other areas where human rights protections are lacking. Voluntary international guidelines, principles, and performance standards encourage investors to recognize, respect and protect the land and resource rights of local communities, indigenous peoples and others who hold legitimate rights to their assets.

When those making these investments fail to take adequate account of local land and resource rights, it often results in significant costs to local populations, and to specific projects. Many companies are looking for guidance on how to make their agricultural investments more sustainable and inclusive and less risky with respect to land tenure issues.

What is the U.S. government doing or could it be doing to help avoid and decrease the negative impact caused by such transactions? How can the U.S. government enhance U.S. companies' understanding and visibility of these issues and facilitate due diligence in their supply chains? How can the U.S. government support company efforts to mitigate land tenure risks, and promote investments in developing countries that do not displace or disadvantage local communities? At the urging of Congress, the U.S. Department of Agriculture (USDA) established a consultative group in 2010 to explore ways for companies to reduce the likelihood that agricultural products imported into the United States were produced by forced labor or child labor. In 2011 the USDA published Proposed Guidelines on Forced and Child Labor. What is the status of these guidelines and their implementation?

Facilitators: Motoko Aizawa, (Institute for Human Rights and Business, Managing Director & Chair of IHRB US Board), Amy Diggs (USG)

Participants: Roberto Borrero, (International Indian Treaty Council), Bruce Buchanan (NYU Stern), Tim Fella (USAID), Amanda Richardson, (Center for Gender Resource Equity)

Rapporteur: Larry Arbuthnot

Overview: After introductions, several attendees noted that land rights are largely undocumented in the less democratic environments where disputes typically occur and where land use often is contested. Where land records exist, they are often disorganized and subject to corruption, which creates a more risky environment for land based investments to occur. Recent media attention on “land grabs” and other negative land related situations have focused on corporations that acquire land through either lease or title in a way that displaces legitimate rights holders. It is hard to broadly characterize private sector or government actions given that both the heterogeneous group of actors involved in land decisions and the fact that governments may allocate a piece of property in good faith only to realize that land claims have subsequently emerged.

Recent Developments

Out of this ambiguity, some attempts have been made in recent years to address land related issues. The Food and Agriculture Organization of the UN (FAO)’s *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* have moved the needle of the conversation and various organizations (UNCTAD, FAO, IFAD and the World Bank) have separately crafted *Principles for responsible agricultural investment (PRAI)* that respects rights, livelihoods and resources.

The question that remains in light of these new entities is how to operationalize broad and good business principles?

In that vein, the group discussed the fact that USAID is in the process of receiving public comment on a draft entitled: *Practical Guide for Land Based Investments*. It seeks to improve the enabling environment and ensure that local laws and policies are put into place that protect all stakeholders (especially indigenous communities, smallholder farmers, etc.).

Parallel to USAID’s efforts, a broad coalition of international institutions meet twice yearly via the *Global Donor Working Group on Land*, with the aim of improving donor coordination on land governance and crafting joint actions where possible. Notable in their efforts is an attempt to begin a “safe” dialogue, where land issues can be openly discussed among various stakeholders despite the traditional contentiousness of these issues.

Tools

The conversation then turned to what tools might help create an enabling environment for meaningful action on making more equitable land based investment decisions, aimed in part at protecting disadvantaged stakeholders, most notably indigenous peoples:

1. The UN Global Compact's "*Food and Agriculture Business Principles*" and the "Voluntary Principles on Security and Human Rights" could serve as models for businesses that interact with indigenous peoples outside of the United States.
2. Depending on how the USG responds to issues and cases that have arisen through the mechanisms of the *UN Committee on the Elimination of Racial Discrimination (CERD)*, it's response may provide a framework for assessing land issues more broadly.
3. Resolution from the National Congress of American Indians (NCAI) on the *Impacts on the Contamination of Subsistence Food Resources, Health, Human Rights and Development of Tribes and Indigenous Communities*

Brand Value

The conversation then shifted to the potential role of consumers. A member of the academic community noted that companies with strong brand identities tend to be much more sensitive to these types of issues than those in industries like the extractive sector. (One NGO is working with corporations that source coffee and cocoa and is looking to enhance their brand value through better practices in their supply chains). Once a certain notion is linked to brand value, the consumer is more likely to demand it. In contrast, the B2B context is harder to police/apply pressure. A participant noted that agricultural enhancements that encourage productivity could in fact run counter to goals of affected communities, as a glut of any given commodity could depresses price, with potentially devastating consequences for local actors.

Another participant noted that, despite the appeal of brand value as a lever for action, it is an extralegal concept and can only amplify legal efforts, rather than serve as a substitute for them. Moreover, while socially and environmentally certified supply chains are laudable in name, the diversity of certifications raises the question of which standards *should* be applied. The conversation highlighted the fact that many standards are structured in a way that fails to recognize secondary rights holders, who may not even hold legal recognition from their own national governments.

Moving beyond land tenure, the group addressed the life cycle of acquisitions and the thorny issue of consent when acquiring land. One participant said that, given the large amounts of money spent by companies engaging in land based investments who must deal with protests, conducting “human rights due diligence” can decrease the riskiness of a project. Key business actions in that vein are reflected in a text produced by the UN Global Compact¹ (*Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples*).

Extractives vs. Agriculture

The last part of the conversation focused on a discussion of the extractives and agriculture sectors, specifically that disclosure, transparency and accountability that are expected for the former, but typically absent from the latter. It was suggested by a government representative that understanding why that might be and what lessons can be learned and adopted by the agriculture sector would provide a useful blueprint for making the agricultural sector more responsive and responsible.

Key Questions

What is the government’s role in trying to incentivize better behavior? Better reporting? Providing mechanisms for affected groups to voice their concerns? Scrutinizing social impact reports published by the private sector? Spearheading a coordinated effort to get major banks or debt issuers on board with the idea of providing cheaper capital to responsible/compliant organizations? How far down the chain do we want to go?

¹ Policy Commitment, Human Rights Consultation, engagement, and decision-making Free, Prior, and Informed Consent Grievance Mechanisms & Remediation Monitoring and Reporting